

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.3.01
PROCEDURES MANUAL		ISSUE DATE	February 21, 2007
SUBJECT	Permanent Program – Applications/Priority Reviews/Review Times	Section	Technical/Permitting
		Last Revised	8/18/2000

OBJECTIVE AND INTENT:

To ensure enforcement and permitting personnel review and act upon new permit and revision applications in a timely efficient manner and in accordance with regulatory requirements.

PROCEDURES:

New Permit Applications

Upon completion of field review of a new permit application:

The Field Inspector shall document on the electronic **DMLR-PT-008** form:

- comments¹ relevant to field conditions, indicating whether approval of the permit application is recommended. Also explain whether any adverse impacts or situations could occur if the approval is granted.
- on the bottom of the form, indicate that the application is ready for review by placing a “Y” in the “*Acceptable to begin the review process*” section and place the date in the section provided at the bottom of the form.
- the Field Inspector is to place a “Y” or “N” in the remaining items on the “*Applicable to Package*” tab; place a “Y” in the appropriate item on the “*Route to the Following*” tab to designate the specific technical discipline the application should be routed to (new permits should include all disciplines); and complete the appropriate items with a “Y” or “N” on the “*Indicate Appropriate Response*” tab.
- list the assigned publication number in the comment section of the form.
- instruct the permittee or operator to send a copy of the certified map for the Department of Historic Resources and an additional disc containing the electronic application for the Department of Game and Inland Fisheries to the Big Stone Gap or Keen Mountain office.
- turn the application into the client assistance section or Keen Mountain office.

Revision Applications

During the course of the routine inspection, if the approved plan is thought to be deficient or unworkable, the Field Inspector may initiate action to require a revision in accordance with 4 VAC 25-130-774.11(b) and Procedure #2.3.05.

¹ The Field Inspector must make relevant and factual comments about site conditions that will assist in the application’s technical review. Comments may also include:

1. any concerns about the proposed operation,
2. specific items that need to be addressed in the permit application
3. the impact on any enforcement action that may still be pending.

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The Field Inspector or Permit Review Specialist should inform the permittee that an application for a revision to the approved permit must be filed:

- due to changes in operational plans.
- as required by a Revision Order Notice (**DMLR-ENF-194S**) issued per 4 VAC 25-130-774.11(b).
- as required by a Notice of Violation or Cessation Order
- for an incidental boundary revision - Any extensions to the area covered by the permit, except for an incidental boundary revision, will be considered as an Acreage Amendment which must meet the requirements for a new permit. (See DMLR Memorandum to Operators #5-98²). An incidental boundary revision will be allowed one time for the life of the permit –
 - to add acreage for coal removal as long as there is no net increase in permit acreage, and
 - shall not exceed a 5 acre deletion/addition of coal removal acres. The 5 acres is the maximum total allowed per permit, as any other proposed addition of coal removal acres will be considered as an Acreage Amendment.

The permittee may submit an application for revision of the approved plans to the Division at any time.

The Field Inspector shall inform the permittee that a permit revision application must:

- be submitted utilizing the electronic form (**DMLR-PT-034e**), include a DMLR-PT-034D signed by a person listed as a company official or designated by “power of attorney” to represent the permittee. If the person designated at act under the “power of attorney” signs the DMLR-PT-034D, a copy of the power of attorney authorization must be attached electronically in Item 21.1 of the application.
- contain all plans, data, and statements to support the revision request.
- be reviewed, initialed, and uploaded by the Field Inspector prior to the paper portions of the application being submitted to the Division’s Big Stone Gap or Keen Mountain office.
- be filed with and approved by the Division prior to the permittee initiating any action under the revision.

Significant versus Insignificant Revisions:

² (See DMLR Memorandum to Operators #5-98 at [http://www.dmme.virginia.gov/Dmlr/Operator Memos/Memo to Operator.htm](http://www.dmme.virginia.gov/Dmlr/Operator%20Memos/Memo%20to%20Operator.htm) - 5-98)

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The Field Inspector must determine whether the revision constitutes an insignificant or significant departure from the approved plans.

The revision application must include the information required by 4 VAC 25-130-774.13(b) and comply with 4 VAC 25-130-773.13 (Public Notice/Public Participation) if the proposed revision constitutes a significant departure from the current mining or reclamation plan, such as, but not limited to, a change in the:

- approved mining method,
- hydrologic balance outside of the permit area,
- postmining land use, or
- major structural design of a sedimentation pond, coal waste pile, coal processing waste disposal facility, dam, impoundment or embankment.

An insignificant departure includes any minor permit change that does not have a significant impact upon the environment. A revision with this classification may require public participation (publication of public notice for 2 weeks).

An insignificant departure may be approved by the Field Inspector provided it is non-technical in nature and will not significantly affect other parts of the plan.

The Field Inspector shall determine whether the “insignificant” revision can be field approved. The Field Inspector should discuss questions or concerns about the revision with the Field Supervisor. Questions that cannot be resolved by the Field Supervisor shall be referred to the Reclamation Services Manager or technical management personnel.

NOTE: The permittee’s designation of the revision as “insignificant” does not require the Field Inspector to automatically approve the revision as insignificant. It only alerts the permittee and permit section that the four week public notice period for “significant” revisions may not be required.

To determine whether a boundary change is “insignificant” (4 VAC 25-130-774.13(d)), the Field Inspector must consider the criteria used to determine if the revision constitutes an insignificant or significant departure³.

³ (See DMLR Memorandum to Operators #1-87 at [http://www.dmme.virginia.gov/Dmlr/Operator Memos/Memo to Operator.htm](http://www.dmme.virginia.gov/Dmlr/Operator%20Memos/Memo%20to%20Operator.htm) - 1-87)

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Field Approvable Revisions:

The Field Inspector shall complete the electronic “Application Checklist & Routing Slip” (**DMLR-PT-008**) form as set out on page 1 of this Procedure. The Field Inspector’s comments should also indicate whether performance bond or application fees would be required with the application.

If the revision application cannot be field approved (requires technical or managerial review), the Field Inspector shall document on the electronic **DMLR-PT-008** form:

- comments relevant to field conditions, indicating whether approval of the revision application is recommended.
- explain whether any adverse impacts or situations could occur if the approval is granted.
- and complete the form as set out on page 1 of this procedure.

Whether or not the revision application is field approvable, the Field Inspector should make any relevant and factual comments about site conditions that will assist in the application’s technical review, such as -

1. the purpose of the revision,
2. the effect of the revision upon the rest of the operation,
3. whether the revision meets the requirement of 4 VAC 25-130-774.13(c), and
4. the impact on any enforcement action that may still be pending.

Requests for Priority Review -

In order to assist its clients, the DMLR may honor an applicant’s request for expedited review due to unforeseen circumstances experienced by the applicant. **The Inspector may also request priority review of an application due to outstanding enforcement action.**

When a priority review is necessitated by hardship as a result of unforeseen circumstances, the Field Inspector shall advise the applicant to submit a written request for expedited review to the Reclamation Program Manager. The Inspector must review and initial the request before it is forwarded to the Reclamation Program Manager.

The Inspector shall ensure the request for priority review includes:

- a statement describing what hardship exists;
- supporting evidence for the hardship determination; and,
- the date by which Division’s review approval is needed.

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The Inspector shall instruct the applicant to place a copy of the request with each copy of the application that is available for inspection and copying.

Permit Section's Review -

The Reclamation Program Manager will evaluate each request and if approved will determine the appropriate review completion date, taking into account the reviewers' workloads and other factors. The Division will strive to accommodate the applicant's request, however, it will not render a premature decision. The Reclamation Program Manager shall notify the applicant in writing within five working days from receipt of the request, should the request not be granted with an explanation for the decision.

If priority review is granted for a **new permit application** or "**significant departure**" **revision**, the Division shall conduct the review by completing the **first review** within 10 working days (this time will be needed to perform an adequate and complete review).

- Second and third reviews will be assigned a priority date of 10 working days, provided the applicant's response to comments is timely and complete.
- If resubmittals (responses and corrections) are not adequate to allow approval after the third review, the priority status will expire.
- The Permit Review Specialist shall place a resubmittal deadline for corrections of 14 days from the date of each comment letter. If the corrections are not submitted within this 14-day deadline, the priority review status will expire.

Insignificant revisions normally require less time to review, do not require public notification, and often are mandated by an immediate need in the field; therefore,

- Priority review dates of less than 10 working days may be assigned for the first and second reviews.
- If the first resubmittal (responses and corrections) is not adequate to allow approval after the second review, the priority status will expire.
- The Permit Review Specialist shall place a resubmittal deadline for corrections of 14 days from the date of the comment letter. If the corrections are not submitted within this 14-day deadline, the priority review status will expire.

When the Reclamation Program Manager receives and approves a request for a priority review, the Permit Review Specialist (EP Coordinator) shall label the front of the application with "**PRIORITY**" and indicate the:

- date the request was received.

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- “review by” date.
- “return by” date.

The latter two dates may or may not coincide with the completion date requested by the applicant or Field Inspector.

When logging the application into the Permitting Review tracking system, the standard 10-day turn around time will be entered in each case.

Review personnel will strive to complete the review as soon as possible, but by the priority date. If it appears that workload impedes review by the set deadline, the reviewer shall seek direction from the immediate supervisor.

Should the Division return the application for corrections to the applicant, and the applicant subsequently fails to resubmit the required revisions or corrections to the Division within the set resubmittal time, the Division will discontinue its expedited review.

Permit/Technical Review Times -

The following review times shall be applicable for application reviews in general:

- 10 working days for New Permits, Acreage Amendments, Significant Revisions, Priority Reviews, and Applications with Enforcement Action Pending. Note: the Reclamation Program Manager may assign shorter review times if the item being reviewed is being tracked on the 60-day list.
- 15 working days for Insignificant Revisions, Mid-Terms, Renewals, Completions Reports, Permit Release, Bond Reduction, Plans Revision, Operator Additions, Succession Applications, Permittee Changes, Anniversary Reports, Acreage Revision (not significant) and any other application type not listed.